IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1046/2007

Reserved on.7.8.2007

Decided on.9.8.2007

Shimla Education Society and Trust.
…Petitioner.

Versus

State of H.P. & another. **…Respondents**

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

The Hon'ble Mr. Rajiv Sharma, Judge.

Whether approved for reporting ?[1]. yes.

For the petitioner	:	Mr. Shrawan Dogra, Advocate.
For the respondents		Mr. M.S. Chandel, Advocate General with Mr. J.K. Verma, Deputy Advocate General for respondent No.1.
		Mr. V.D. Khidta, Advocate for respondent No.2.

Per Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner trust (hereinafter referred to as the petitioner for convenience sake) made an application to the Regional Director, Northern Region Committee, Jaipur seeking recognition for establishing a new institution for conducting the B.Ed. course for the academic session 2006-07 on 25.1.2006. The National Council for Teacher Education granted permission to the petitioner for establishment of the B.Ed. course with an annual intake of 100 students on the 4th of July, 2007. Thereafter the petitioner applied to the respondent No.2-University for affiliation on 5.7.2007. The application of the petitioner was rejected

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?

by the University on 20th July, 2007. The petitioner had also submitted an application seeking a NOC from the respondent-State on 31.1.2005. The State Government rejected the case of the petitioner on 22.6.2007.

The following points arise for consideration in this petition:

1. **Whether the provisions of the National Council for Teacher Education Act, 1993 occupied the field and if so was it necessary to obtain the NOC from the State Government or any other authority?**
2. **Whether any policy framed by the State Government requiring such approval be void?**
3. **Whether the order of rejection passed by the State Government on 22.6.2007 was valid on merits?**
4. **Whether the University should have granted the affiliation to the petitioner institute solely on the basis of the permission by the National Council for Teacher Education?**

Before the afore-mentioned points are taken up for consideration in detail, it will be apt to consider the relevant provisions of the National Council for Teacher Education Act, 1993 (hereafter referred to as the Act).

Chapter-III of the Act provides the functions of the Council. Section 12 prescribes in detail the functions which are to be discharged by the Council. Section 12 reads thus:

> **"12. It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinate development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may-**
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> **(a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;**

(b) make recommendations to the Central and State Governments, Universities, University Grants Commission and recognized intuitions in the matter of preparation of suitable plans and programmes in the field of teacher education;

(c) co-ordinate and monitor teacher education and its development in the country;

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions;

(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;

(f) lay down guidelines for compliance by recognized institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualification;

(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;

(h) lay down guidelines regarding tuition fees and other fees chargeable by recognized institutions;

(i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;

(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognized institutions;

(k) evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognized institutions;

(l) formulate schemes for various levels of teacher education and identity recognized institutions and set

up new institutions for teacher development programmes;

(m) take all necessary steps to prevent commercialization of teacher education; and

(n) Perform such other functions as may be entrusted to it by the Central Government.

Chapter IV of the Act deals with recognition of Teacher Education Institutions. Section 14 read thus:

"14 (1). Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

(2) The fee to be paid along with the application under sub section (1) shall be such as may be prescribed.

(3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall-

(a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

(b) it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing:

provided that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution, in respect of which recognition has been refused, shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4),-

(a) grant affiliation to the institution, where recognition has been granted; or

(b) cancel the affiliation to the institution, where recognition has been refused.

Chapter-VII of the Act deals with miscellaneous provisions. Section 31 empowers the Central Government to frame the rules to carry out the provisions of the Act. Section 32 empowers the Council to make regulations not inconsistent with the provisions of the Act and the rules made there-under to carry out the provisions of the Act. While exercising the powers under section 31 of the Act, the Central Government had framed the rules called" National Council for Teacher Education Rules, 1997".

The National Council for Teacher Education has framed the regulations called “the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2005. These Regulations were duly published in the Gazette of India on 13.1.2006. Regulation 5 prescribes the manner of making an application. The processing of applications has been provided in detail under Regulation 7. Sub-regulations 1 to 5 of Regulation 7 read thus:

(1) Applications which are complete in all respects shall be processed by the office of the Regional Committee concerned within 30 days of receipt of the such applications.

(2) The applications shall be processed as under:-

i. The particulars of the institutions shall be hosted on the official website of the Regional Committee concerned of the National Council for Teacher Education.

ii. This will serve as an electronic communication to the applicant and also the State Government/UT Administration concerned for necessary follow up action on their part.

iii. A written communication in addition shall also follow to the applicant.

iv. A written communication along with a copy of the application form submitted by the institution(s) of the concerned state/U.T. shall be sent to the State Government/U.T. Administration concerned.

(3) On receipt of the communication, the State Government/UT Administration concerned shall furnish its recommendations on the applications to the office of the Regional Committee concerned of the National Council for Teacher Education within 60 days from receipt. If the recommendation is negative, the State Government/UT Administration shall provide detailed reasons grounds thereof, which could be taken into consideration by the Regional Committee concerned while deciding the

application. If no communication is received from the State Government/UT Administration within the stipulated 60 days, it shall be presumed that the State Government/UT Administration concerned has no recommendation to make.

(4) Though normally the applicant institutions will ensure submission of applications complete in all respects, in order to cover the inadvertent omission of deficiencies in documents, the office of the Regional Committee shall point out the deficiencies within 30 days of receipt of the applications, which the applicants shall remove within 90 days. The date of receipt of the application after completion of deficiencies shall be treated as the date of receipt of the application complete in all respects within the meaning of Regulation 7 (1).

(5) Ordinarily, the inspection of infrastructure, equipment, instructional facilities etc. of an institution shall be conducted within 30 days of completion of processing of its application by the office of the Regional Committee with a view to assessing the level of preparedness of the institution to commence the course. Such inspection shall be in the chronological order of the date of the receipt of the completed application in the office of the Regional Committee concerned. Among the applications received on the same day, alphabetical order shall be followed.

The Council had also framed Norms and Standards for Secondary Teacher Education Programme leading to Bachelor of Education (B.Ed.) degree. Clause 2.0 of the Norms and Standards provides that the duration of B.Ed. Programme should at least be one academic year. Clause 3.2 of the Norms lays down the eligibility for the candidates. The admission procedure has been provided under clause 3.3. Qualifications of the staff have been provided under clause 4.0. Clause 5.0 provides

for facilities. The above quoted provisions of the Act, Regulations and Norms provide the parameters for setting up of an institution.

The State Government had framed a policy with regard to issuance of NOC for the introduction of B.Ed. Course on regular basis in the private sector dated 20.12.2004. The policy in brief prescribes the norms of infrastructure, equipment, mode of appointment of staff, mode of submission of application, inspection by the committee, fee structure and issuance of NOC has been provided under clause 5.5 of the policy which reads as under:

> **"The Government reserves the right for issuance of NOC, consider the trained man power and the future requirements."**

The respondent No.2-University had framed its Ordinances and Ordinances 38.6 (i) of the First Ordinances dealing with the affiliation is reproduced as under:

> **"The concurrence of Government stating clearly that the case of institution be pursued by the university for grant of affiliation/extension of affiliation."**

Points 1 to 3:

Since all these points are inter-connected, therefore, they can be conveniently discussed together.

The National Council for Teacher Education Act, 1993 is relatable to Entry No. 66 of List 1 of Schedule VII to the Constitution. The coordination and determination of standards in institutions of Higher Education or Research, Scientific and Technical Institutions fall under the ambit of Entry No.66 of List 1 of Schedule VII of the Constitution. The parliament has enacted the National Council for Teacher Education Act, 1993 to achieve a planned and coordinated development of teacher education system throughout the country, the regulation and proper

maintenance of norms and standards in the teacher education system and for matters connected therewith. The National Council for Teacher Education has been established in four places by the Central Government. One of the Centres is in Jaipur.

The petitioner had submitted an application to the Regional Centre at Jaipur strictly as per the provisions of the National Council for Teacher Education Act, 1993. The application had been processed in accordance with law and only thereafter the permission was accorded to the petitioner on 4.7.2007. The petitioner had been granted permission to run one year B.Ed. course with an annual intake of 100 students under clause 7 (12) of NCTE Regulations dated 13th January, 2006. Sr. No. 4 of letter dated 4th July, 2007 provides that the recommendation was subject to fulfillment of such other requirements as may be prescribed by other regulatory bodies like the UGC and State Government etc. wherever applicable.

As far as the rejection made by the State is concerned, no reasons have been assigned in its communication dated 22.6.2007. The University had merely stated in its rejection letter that the NOC from the State Government is a prerequisite for granting affiliation.

Once the field is occupied under Entry No.66 of List 1 of Schedule VII of the Constitution of India under which the Central Act i.e. the National Council for Teacher Education Act, 1993 has been framed, the State Government could not frame the policy repugnant to the Central Act. The policy framed by the State on 20.12.2004 is unenforceable. The National Council for Teacher Education Act, 1993 is a complete code in itself and covers the entire arena with regard to teachers' education. The Regulations have been framed under the Act called "the National Council for Teacher Education (Recognition, Norms and

Procedure) Regulations, 2005". There is a detailed procedure for submission and processing of the applications. The State could not prescribe its own norms by framing a policy in view of the Regulations and Norms published under the National Council for Teacher Education Act, 1993. The rigours of the same have been overcome by the petitioner and it was only on the fulfillment of the criteria laid down in the Regulations and the Norms that the permission had been accorded to the petitioner institution. The State could not insist for obtaining a NOC on the basis of para 5.5 of the policy. The question whether the State could encroach upon the occupied field as per the provisions of the National Council for Teacher Education Act, 1993 is no more *res integra* in view of a very exhaustive judgment of the Hon'ble Supreme Court in ***State of Maharashtra Versus Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others*****,** 2006 (9) SCC 1**.** Their Lordships while dealing with the National Council for Teacher Education Act, 1993 have held as under:

> **"From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as State Legislatures and appropriate Act can be by the State Legislature subject to limitations and restrictions under the Constitution.**
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> **In the instant case, admittedly, Parliament has enacted 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated**

development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to State Government to refuse permission relying on a State Act or on 'policy consideration'.

Even otherwise, in our opinion, the High Court was fully justified in negativing the argument of the State Government that no permission could be refused by the State Government on 'policy consideration'. As already observed earlier, policy consideration was negatived by this Court in Thirumuruga Kirupananda Trust, as also in Jaya Gokul Educational Trust.

Again the Hon'ble Supreme Court in ***State of Tamil Nadu and another Versus Adhiyaman Educational & Research Institute and others***, (1995) 4 SCC 104 has held as under:

What emerges from the above discussion is as follows:

(i) The expression 'coordination' used in Entry 66 of the Union List of the seventh schedule to the Constitution does not merely mean evaluation. It means harmonization with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence

of any valid compelling reasons, it must be given its full effect according to its plaint and express intention.

(ii) **To the extent that the state legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.**

(iii) **If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the state legislation being repugnant to the central legislation, the same would be inoperative.**

(iv) **Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.**

(v) **When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.**

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognize or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

The Hon'ble Supreme Court had also considered the same and similar issues as raised in this petition in ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education & Charitable trust vs. State of Tamil Nadu and others*** 1996 (3) SCC 15 with regard to establishment of new Medical Colleges. Their Lordships have held that the State Government could not refuse essentiality certificate on a policy consideration after going through the entire gamut of the Indian Medical Council, Act, 1956 vis-à-vis Tamil Nadu Medical University Act, 1987. Their Lordships have held as under:

> **"Section 10-A seeks to achieve this object by prescribing in sub-section (1) that no person shall establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of the said section. Similar permission is required for obtaining a new or higher course of study or training or for increase in the admission capacity in any course of study or training in a medical college. Sub-section (2) of section 10-A requires that every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the central Government a scheme in the prescribed form and the said scheme is to be referred to the Medical Council for its recommendations. Under sub-section (3), the scheme is required to be considered by the Medical Council having regard to the factors referred to in sub-section (7) and Medical Council submits the scheme together with its recommendations thereon to the Central Government. Sub-section (4) empowers the central Government, after considering the scheme and the recommendations of the Medical Council and after obtaining, where necessary, such other particulars as may be considered necessary buy it from the person or college concerned, and having regard to the factors referred to in sub-section (7), to either approve, with such condition, if any, as it may consider necessary, or disapprove the scheme and any such approval shall be a permission under sub-section (1). Under sub-section(5) the**

scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted and the permission of the Central Government required under sub-section (1) shall be deemed to have been granted where no order passed by the Central Government has been communicated to the person or college within one year from the date of submission of the scheme to the central Government under sub-section (2). The factors that are required to be taken into consideration by the Medical Council and the central Government under sub-section (7) include the capacity to offer the minimum standard of medical education as prescribed by the central Government, adequacy of financial resources, necessary facilities in respect of staff equipment, accommodation, training, and other facilities to ensure proper functioning of the medical college, adequate hospital facilities, arrangement/programme to impart proper training to students and the requirement of manpower in the field of practice of medicine.

It would thus appear that in section 10-A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country. No further scope is left for the operation of the State Legislation in the said field which is fully covered by the law made by Parliament. Applying the tests laid down by this Court, it must be held that the proviso to sub-section (5) of Section 5 of the Medical University Act which was inserted by he State Act requiring prior permission of the State Government for establishing a college is repugnant to section 10-A inserted in the Indian Medical Council Act, 1956 by the Central Act which prescribes the conditions for establishing a new medical college in the country. The said repugnancy is, however, confined to the field covered by section 10-A, viz. establishment of a new medical college and would not extend to establishment of other colleges.

The fact that the state Act has received the assent of the President would be of no avail because the repugnancy is with the Central act which was enacted by Parliament after the enactment of the state Act. In view of the proviso to sub-

article (2) of Article 254 Parliament could add to, amend, vary or repeal the State Act. In exercise of this power parliament could repeal the state Act either expressly or by implication. (See:Zaverbhai Amaidas v. State of Bombay, SCR at p.809; Deep Chand v. state of U.P. SCR at p.51.} Although the Central Act does no expressly amend or repeal the State Act but the effect of the non obstinate clause in sub-section (1) of Section 10-A which gives overriding effect to the provisions of Section 10-A over anything contained in the Indian Medical Council Act, 1956 or any other law for the time being in force, is to render inapplicable, and thereby repeal impliedly, the proviso inserted in sub-section (5) of section 5 of the Medical University Act in the matter of establishment of a new medical college in the state of Tamil Nadu and its affiliation by the Medical University. In other words, as a result of insertion of section 10-A in the Indian Medical Council Act, 1956 by the Central act, with effect from 27.8.1992, the proviso to section 5(5) of the Medical University act has ceased to apply in the matter of establishment of a medical college in the state of Tamil Nadu and its affiliation to the Medical University and for the purpose of establishing a medical college permission of the Central Government has to be obtained in accordance with the provisions of Section 10-A. If such a permission is granted by the central Government a further permission of the State Government under the proviso to section 5(5) of the Medical University Act would not be required for the purpose of obtaining affiliation of such a college to the Medical University.

After the enactment of Section 10-A by the central government, the Medical Council, by notification dated 20.9.1993, has made the "Establishment of New Medical Colleges. Opening of Higher Courses of study and Increase of Admission Capacity in Medical Colleges Regulations, 1993" (hereinafter referred to as "the Regulations") whereby a scheme for application for permission of the Central Government to establish a new medical college has been made. In the said scheme qualifying criteria for applying for permission to establish a new medical college have been laid

down. One of the conditions that is required to be fulfilled by the eligible organizations is that "essentiality certificate regarding the desirability and feasibility of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material is available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration." Shri Sanghi has urged that even if the proviso to Section 5(5) of the Medical University Act is held to be inapplicable in the matter of establishing a new medical college and the requirement of obtaining the prior permission of the State Government for establishment of a medical college cannot be insisted upon under the said proviso, a similar requirement has now been imposed by virtue of the qualifying criteria laid down in the scheme as framed by the Regulations and that this was also insisted upon by the Central Government in its Letter of Intent dated 12.12.1995. The submission of Shri Sanghi is that the state of Tamil Nadu has considered the matter in the light of this requirement and has refused the necessary permission.

It is no doubt true that in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of the conditions for the qualifying criteria laid down is that essentiality certificate regarding desirability and feasibility of having the proposed college at the proposed location should be obtained from the state Government. The said condition about obtaining an essentiality certificate form the State Government regarding desirability and feasibility of having the proposed college at the proposed location cannot be equated with obtaining prior permission of the State Government for establish a new medical college as required under the proviso to section 5(5) of the Medical University Act. For the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed

location. The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone.

As indicated earlier, the Trust did approach the State of Tamil Nadu for grant of essentiality certificate in terms of Letter of Intent dated 12.12.1995 issued by the Government of India, but the State Government has refused to issue the said certificate by its order dated 10.1.1996. The only reason which has been given by the State Government for such refusal is that "the Government have not changed the policy of not permitting any private trust or management to start a medical/dental college". This would show that instead of considering the matter of grant of essentiality certificate on the basis of desirability and feasibility of having the proposed medical college at the proposed location, the State Government has refused to grant the essentiality certificate on the basis of its earlier policy of not permitting any private trust or management to start a medical/dental college in the State. The State Government could not refuse essentiality certificate on such a policy consideration. The refusal on the part of the State Government to grant the essentiality certificate in respect of the medical college proposed to be established by the Trust cannot, therefore, be upheld."

Similarly the Hon'ble Supreme Court in ***Jaya Gokul Education Trust Versus Commissioner & Secretary to Government Higher Education Department, Thiruvanathapuram, Kerala State and another***, 2000 (5) SCC 231 have held that the so-called "policy" of the State Government as mentioned in the counter affidavit filed in the High Court was not a ground for refusing approval. Their Lordships were considering the provisions of the All India Technical Education Act, 1987 vis-à-vis Kerala University's First Statute. Their Lordships after considering the rival submissions had held that the State Government's

refusal to grant permission was illegal and void on merits. Their Lordships have held as under:

> **As held in T.N. case the Central Act of 1987 and in particular, section 10(k) occupied the field relating to "grant of approvals" for establishing technical institutions and the provisions of the central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular statute 9(7), they merely required the University to obtain the "views" of the State Government. That could not be characterized as requiring the "approval" of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in T.N. case there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the state Governments and the universities concerned. The state-Level Committee and the central regional Committees contained various experts and State representatives. In case of difference of opinion s between the various consultees, AICTE would have to go by the views of the central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N. case it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government.**
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> **Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the state Government and even if there was one, it would have been**

repugnant to the AICTE Act. The University Statute 9(7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval", it would have been repugnant to the AICTE Act. Point I is decided accordingly.

Even on merits, the reasons given by the State Government in its counter are not tenable in law. The Director of Technical Education of the State was a member of the State-Level Committee as per Regulation 9(4) of the AICTE Regulations. The Secretary, Technical Education of the state of Kerala was also a member of that Committee. AICTE's approval dated 30.4.1995 showed that the approval had been given by the State-Level Committee of which they were obviously members. It is, therefore, not understandable how the Director had given a contrary opinion to the State Government. Regulation 8(4) of AICTE only required calling for the "comments/recommendations" of the State Government and of the University. In case, there was difference between the State Government, University or the Regional Committee the Central Tasks Force was to make a final recommendation under Regulation 8(4). Here the letter of approval of AICTE dated 30.4.1995 showed that the Central Task Force had given its approval. The said approval was based also on the inspection by the Expert Committee of AICTE. Hence the State Government in its counter could not have relied upon any contrary opinion of the Director of Technical Education. If the State Government had any other valid objections, its only remedy was to place its objections before the AICTE Council under the AICTE Act or before the committees, e.g. State-Level Committee etc.

The so-called "policy" of the State as mentioned in the counter-affidavit filed in the High Court was not a ground for refusing approval. In Thirumuruga Kirupananda & Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. state of T.N. which was a case relating to medical education and which also related to the effect of a

Central law upon a law made by the State under Entry 25 List III, it was held (at SCC p.35,para 34) that the

"essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone".

(emphasis supplied)

Therefore, the State could not have any "*policy*" outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE to enable the latter to take appropriate action.

The learned Advocate General had strenuously argued that in view of the condition imposed at Sr. No.4 of the letter issued by the National Council for Teacher Education, it was necessary to fulfill the requirements of the policy. It is evident from the phraseology employed in Sr. No.4 of letter dated 4th July, 2007 that it talks of two things; (i) regulatory bodies like UGC; and the State Government, and (ii) fulfillment of such other requirements as may be prescribed, wherever applicable. (emphasis supplied by us).

We are of the firm view that the condition imposed vide Sr. No.4 is superfluous. Once the permission has been accorded by the competent authority as per the Central Act, there was no requirement of further fulfillment of any condition prescribed by the State. The State is not a

regulatory body under any law of the land, either a Central or a State Act.

The upshot of the above discussion is that since the provisions of the National Council for Teacher Act, 1993 occupied the field, the State Government could not frame any policy in the same area. The policy framed by the State is unenforceable being repugnant to the Central Act. Consequently the State could not force the petitioner to obtain a NOC on the basis of the policy and the rejection letter dated 22.6.2007 is not valid in the eyes of law. The policy dated 20.12.2004 framed by the State is liable to be quashed and set aside.

Point No.4:

Mr. Shrawan Dogra, Advocate had strenuously argued that as per the bare reading of Section 14 (6) of the National Council for Teacher Education Act, 1993, it was incumbent upon the respondent No.2 to accord affiliation. Section 14 of the Act has already been reproduced herein above.

Mr. V.D. Khidta, Advocate had argued that it is necessary for the petitioner to seek concurrence from the State Government on the basis of Ordinances 38.6 (i) of the First Ordinances.

We have no doubt whatsoever in our mind that once the permission has been accorded to the petitioner to run the institute by the National Council for Teacher Education, the University had to accord affiliation to the petitioner institute. The language employed in sub-section 6 of Section 14 of the National Council for Teacher Education Act, 1993 is mandatory. The University could not insist for something which has not been stipulated under the Central Act. The University is not required to get any concurrence from the State as pleaded by Mr. V.D. Khidta. Ordinances 38.6 (i) requiring the concurrence of the State Government at the time of granting affiliation is repugnant to the National

Council for Teacher Education Act, 1993. This question had already been gone into by the Hon'ble Supreme Court in two judgments cited herein above i.e. *State of T.N. and another Versus Adhiyaman Educational & Research Institute and others*, 1995 (4) SCC 104 and *Jaya Gokul Education Trust Versus Commissioner & Secretary to Government Higher Education Department, Thiruvanathapuram, Kerala State and another,* 2000(5) SCC 231.

Their Lordships of the Supreme Court have held in ***State of T.N. and another Versus Adhiyaman Educational & Research Institute and others*****,** 1995 (4) SCC as under:

> **"A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly to allocate and disclose grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it**

or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges. As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

The Hon'ble Supreme Court **in Jaya Gokul Educaiton Trust Versus Commissioner & Secretary to Government Higher Education Department, Thiruvanathapuram, Kerala State and another**, 2000 (5) SCC 231 have held that the decision of the University of not granting affiliation was wrong on merit. Their Lordships have held as under:

Admittedly, the University's inspection report was in favour of the appellant. This is clear from the appellant's letter dated 31-5-1995 to the State Government. The only requirement as per Statute 9(7) was for the University to obtain the "views" of the State Government. Obtaining the "views" of the State Government, as already stated, did not amount to obtaining its "approval". Procedure and conditions for affiliation could not be inconsistent with the

provisions of the Central Act, in particular Section 10(k) of the Regulation, and the University could not seek approval of the Government. The University was also one of the agencies consulted by the council of AICTE under Regulation 8. Once that was over, and approval was granted by AICTE, if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring those facts to the notice of AICTE so that the latter could take appropriate action."

In view of the categoric pronouncements of the law by their Lordships of the Supreme Court, we are of the firm view that after the enforcement of the National Council for Teacher Education Act, 1993, the Ordinances of the University will be deemed to have become unenforceable with regard to educational institutions covered by the said Act. The Ordinances framed by the University under the Act are required to be in conformity with the norms and guidelines prescribed by the National Council for Teacher Education Act, 1993.

What emerges from the above discussion is as follows:

1. The State has no power to impinge upon the Legislative power of Parliament by framing a policy since as far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is occupied by Entry 66 of List 1 of Schedule VIII of the Constitution.
2. The policy framed by the State is void being repugnant to the National Council for Teacher Education Act, 1993. The order passed by the State on 22.6.2007 and the order passed by Respondent No.2 University dated 20.7.2007 are a nullity in the eyes of law.
3. The University should have considered the grant of affiliation without insisting for any NOC from the State Government and should have acted on the basis of the permission accorded by the National Council for Teachers Education.

Accordingly this writ petition is allowed. Annexure P-3 i.e. the policy framed by the State for laying down the Norms and Standards for Secondary Education Programme Leading to Bachelor of Education (B.Ed.) Degree dated 20.12.2004, Annexure P-19 dated 22.6.2007 and Annexure R2/1 dated 20.7.2007 are quashed and set aside. The respondent No.2 University is directed to grant affiliation to the petitioner institute within a period of one week from the date of receipt of certified copy of this judgment with a further direction to allocate the seats to the petitioner institute on the basis of the entrance test conducted by it for B.Ed. course. The respondent No.2 University is further directed to conduct counselling for the intake of students in the petitioner institute for B.Ed. course as well, for the current academic session. No order as to costs.

(V.K. Gupta), C.J.

(Rajiv Sharma), J.

August 9, 2007
Awasthi